



WASHINGTON STATE LIQUOR CONTROL BOARD

Notice of Proposed Rule Making #04-22

How to Apply for a Liquor License

The Washington State Liquor Control Board would like your input on the attached proposed rules regarding **how to apply for a liquor license**.

This rule making is filed with the Office of the Code Reviser in Washington State Register number 04-24-095 (<http://slc.leg.wa.gov/wsr/register.htm>).

Background

Currently rules on this subject are spread throughout different WAC provisions and do not clearly outline the qualifications and steps necessary for an applicant to receive a liquor license. Also, policies and practice need to be converted into rule form.

These proposed changes incorporates the recommendations of the 2000 Regulatory Review Committee and a workgroup of Licensing and Enforcement staff that has met over the past six months. These proposals have also been shared with the Licensing Process Improvement Task Force members.

Effect of Proposed Rule Changes

The proposed rules would be included in a new WAC 314-07. These proposed rules changes either supplement or repeal existing rules contained in WAC 314-12. The proposed revisions would:

1. Define a public institution as public colleges and universities.
2. Better outline the liquor license application process.
3. Better define true parties of interest.
4. Put CHRI policy into rule form with changes.
5. Put violation history policy into rule form.
6. Put Pre-Approval Provisional Permit (PPP) policy into rule form; Distinguish between a temporary application for a "new" and for an "assumption" (change of ownership) of an existing licensed business.
7. Better outline reasons we may deny a license, and state clearly that applicants have the right to an administrative hearing if denied.

8. Better outline when an application is needed for a change in ownership in the licensed business.
9. Streamlines change of trade name process.
10. Simplify rule regarding delegation of authority for staff to approve uncontested applications.

(The following pages of this notice show how the rules will be revised through the use of strikethrough and underlining.)

Public Comment

Please forward your comments to the Liquor Control Board by mail, e-mail, or fax by **January 27, 2005**.

By mail: Rules Coordinator
Liquor Control Board
PO Box 43080
Olympia WA 98504-3080

By e-mail: rules@liq.wa.gov

By fax: 360-704-4921

Following this public comment period the Liquor Control Board will decide whether or not to pursue these rule changes. If the rule making continues, the agency will publish proposed rule language and hold at least one public hearing.

Questions?

If you have any questions, please contact Karen McCall, Off-Premises License Manager, at 360-664-1631 or by e-mail at rules@liq.wa.gov.

(New Chapter 314-07 - How to Apply for a Liquor License)

NEW SECTION

WAC 314-07-005 What is the purpose of this chapter? RCW 66.24.010 states the board will only issue licenses and permits to applicants and locations that meet certain qualifications. The purpose of this chapter is to outline the qualifications and steps necessary to receive a liquor license or permit.

NEW SECTION

WAC 314-07-010 Definitions. Following are definitions for the purpose of this title. Other definitions are in WAC 314-01-005 and RCW 66.08.010.

(1) “Applicant” or “liquor license applicant” means any person who is a true party of interest in a liquor license or permit application, as outlined in WAC 314-07-035.

(2) “Business name” or “trade name” means the name of a licensed business as used by the licensee on signs, advertising, etc.

(3) “Financier” - A “financier” means any person who has made or will make an investment in the licensed business of more than ten thousand dollars or of more than 10% of the initial cash outlay needed to open the business.

(4) “Licensee” or “liquor licensee” means any entity that holds a liquor license or permit, or any person who is a true party of interest in a liquor license or permit, as outlined in WAC 314-07-035.

(5) “Public institution” means a public college or university. (See WAC 314-07-020 regarding the liquor control board notifying public institutions of liquor license applications.)

NEW SECTION

WAC 314-07-015 General information about liquor licenses.

(1) When the board issues a liquor license, it should not be construed as granting a vested right in any of the privileges of the license. Rather, a person or entity must meet certain qualifications to receive a liquor license, which are continuing qualifications in order to maintain the license.

(2) A liquor license applicant may not take possession of the business, become a true party of interest, or exercise any of the privileges of a liquor license until the board approves the license application (see WAC 314-07-050 regarding temporary licenses).

(3) In approving a liquor license, the board reserves the right to impose special conditions as to the involvement in the operations of the licensed business of any former licensees, their former employees, or any persons who does not qualify for a liquor license.

NEW SECTION

WAC 314-07-020 Liquor license qualifications and application process. Each liquor license application is unique and investigated individually. The board may inquire and request documents regarding all matters in connection with the liquor license application. Following is a general outline of the liquor license application process.

(1) Per RCW 66.24.010, the board shall send a notice to the local authority regarding the liquor license application. The local authority has 20 days to respond with a recommendation to approve or an objection to the applicant, location, or both.

(a) The local authority may submit a written request to the board for an extension for good cause shown.

(b) If the application is within a board-recognized Alcohol Impact Area, the board will give the local authority 60 days to comment on the liquor license application or assumption (see WAC 314-12-215(7) for more information).

(2) For an application for a new liquor license privilege, the board may require a public posting notice to be posted at the site for fourteen days.

(3) For an application for a new liquor license privilege, the board shall notify any schools, churches, or public colleges or universities within 500 feet of the business (see RCW 66.24.010(9) for more information).

(4) The board will verify that the proposed business meets the minimum requirements for the type of license or privilege requested.

(5) The board may conduct an investigation of the applicants' criminal history and administrative violation history, per WAC 314-07-040 and WAC 314-07-045.

(6) The board may conduct a financial investigation in order to verify the source of funds used for the acquisition and startup of the business, the applicants' right to the real and personal property, and to verify the true party(ies) of interest.

(7) The board may provide a briefing on liquor laws and rules.

(8) The board may conduct a final inspection of the proposed licensed business, in order to determine if the applicant has complied with all the requirements of the license or privilege requested.

(9) Per RCW 66.24.010(2)(a), all applicants must have resided in the state of Washington for at least one month prior to issuance of a liquor license. For true parties of interest in a corporation or a limited liability company, the entity meets this residency requirement if the entity was formed in Washington or has a certificate of authority to do business in Washington.

(10) Upon failure to respond to the board licensing and regulation division's requests for information within the timeline provided, the application will be administratively closed.

NEW SECTION

WAC 314-07-035 What persons or entities have to qualify for a liquor license? Per RCW 66.24.010(1), a liquor license must be issued in the name(s) of the true party(ies) of interest.

(1) **True parties of interest** - For purposes of this title, "true party of interest" means:

Type of Entity	Persons considered "true party of interest"
Sole proprietorship	Sole proprietor and spouse.
General partnership	All partners and spouses.
Limited partnership or limited liability partnership	<ul style="list-style-type: none">• All general partners and spouses;• All limited partners that have more than 10% interest in the partnership and their spouses.
Limited liability company	<ul style="list-style-type: none">• All members with more than 10% interest in the LLC and spouses. (Note: In order for the liquor control board to identify the true parties of interest, we will need to know all parties that have an interest in the limited liability company or have a pending interest.)• All managers and their spouses.
Privately held corporation	<ul style="list-style-type: none">• All corporate officers (or persons with equivalent title).• All stockholders who hold more than 10% of the issued or outstanding stock. (Note: In order for the liquor control board to identify the true parties of interest, we will need to know all parties who have been issued or will be issued corporate stock.)
Publicly held corporation	All corporate officers (or persons with equivalent title).
Multi-Level Ownership Structures	The liquor control board will review each entity to determine which individuals are true parties of interest according to the guidelines in this rule.
Any entity	Any person who is in receipt of, or has the right to receive, more than ten

	<p>percent of the gross or net sales from the licensed business during any full or partial calendar or fiscal year. For the purposes of this chapter:</p> <ul style="list-style-type: none"> ▪ “Gross sales” includes the entire gross receipts from all sales and services made in, upon, or from the licensed business. ▪ “Net sales” means gross sales minus cost of goods sold.
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(2) For purposes of this section, "true party of interest" does not mean:

(a) A person or entity receiving reasonable payment for rent on a fixed or percentage basis under a bona fide lease or rental obligation, unless the lessor or property manager exercises control over or participates in the management of the business.

(b) A person who receives a bonus as an employee, if: the employee is on a fixed wage or salary and the bonus is not more than twenty-five percent of the employee's prebonus annual compensation; or the bonus is based on a written incentive/bonus program that is not out of the ordinary for the services rendered.

(c) A person or entity contracting with the applicant(s) to sell the property, unless the contract holder exercises control over or participates in the management of the licensed business.

(d) A person or entity receiving payment of franchise fees on a fixed or percentage basis under a bona fide franchise agreement, unless the person or entity receiving payment of franchise fees exercises control over or participates in the management of the licensed business.

(3) **Financiers** - The board may conduct a financial investigation of financiers.

(4) **Persons who exercise control of business** - The board may conduct an investigation of any person or entity who exercises any control over the applicant's business operations.

NEW SECTION

WAC 314-07-040 What criminal history might prevent a liquor license applicant from receiving or keeping a liquor license? (1) When the board processes a criminal history check on an applicant, it uses a point system to determine if the person qualifies for a license. The board will not normally issue a liquor license to an applicant who has accumulated eight or more points as indicated below:

Description	Time period during which points will be assigned	Points assigned
Felony conviction	Ten years	12 points
Gross misdemeanor conviction	Three years	5 points
Misdemeanor conviction	Three years	4 points
Currently under federal or state supervision for a felony conviction	n/a	8 points
Non disclosure of any of the above	n/a	4 points each

(2) If a case is pending for an alleged offense that would earn eight or more points, the board will hold the application for the disposition of the case. If the disposition is not settled within 90 days, the board will administratively close the application.

NEW SECTION

WAC 314-07-045 What liquor law or rule violation history might prevent an applicant from receiving a liquor license? The board will conduct an investigation of all applicants' liquor law or rule administrative violation history. The board will not normally issue a liquor license to a person, or to an entity with a true party of interest, who has the following violation history; or to any person who has demonstrated a pattern of disregard for laws or rules.

Violation Type (see WAC 314-29-020 through WAC 314-29-035)	Period of Consideration
<ul style="list-style-type: none"> ▪ Three or more public safety violations, ▪ Four or more conduct violations, or ▪ Five or more regulatory violations. 	<ul style="list-style-type: none"> ▪ Violations issued within two years of the date the application is received by the board's licensing and regulation division. ▪ Violations issued within the last two years the true party(ies) of interest were licensed.

NEW SECTION

WAC 314-07-055 Temporary retail license. Applicants may apply for a temporary retail liquor license in addition to an annual license for the same business. If granted, the temporary license allows the applicant to operate for a period of up to 60 days while the annual license application is being processed.

Type of Application	Qualification and process to receive a temporary retail license
(1) Existing licensed business: Applicant is applying for a license for a business that has an existing license at the location, and all of the following apply: <ul style="list-style-type: none"> • The applicant is applying for the same license privilege(s). • The current license privilege is valid and has not expired. • There are no liquor violations pending on the current license. 	In order to receive a temporary license, the applicant(s) must: <ul style="list-style-type: none"> • Fill out a form provided by the board signed by both the current licensee and the current landlord. • Pay a \$50 fee. • Turn in all documents necessary to complete the initial licensing investigation. • Clear a criminal history check, per WAC 314-07-040. • Complete a briefing on liquor laws and regulations, per WAC 314-07-020(7).
(2) (a) New business or new license type: <ul style="list-style-type: none"> • Applicant is applying for a license at a business location that does not hold a current, valid liquor license. • Applicant is applying for a license or a business that has an existing license at the location, but the applicant is applying for a different license privilege(s). or (b) Existing licensed business as described in subsection (1)	In order to receive a temporary license, the applicant(s) must: <ul style="list-style-type: none"> • Fill out a form provided by the board. • Clear a criminal history check, per WAC 314-07-040. • Complete a briefing on liquor laws and regulations, per WAC 314-07-020(7). • The local authority and any churches, schools, or public colleges or universities within 500 feet of the proposed licensed business must have responded to the liquor control board's notice of liquor license application, or the time period must have passed. See WAC 314-07-020, subsections (1), (2), and (3) for more information. • When the annual liquor license issued, the fee will be prorated back to the date of issuance of the temporary license.

(3) For the purposes of this section, "retail liquor license" shall include all classes of liquor licenses that allow the holder to sell liquor directly to the public.

(4) The privilege of having a temporary license issued upon an application for license does not apply to breweries or wineries, even though these licensees have limited distributor and retail privileges under their manufacturers' licenses.

(5) A temporary license under subsection (1) above may be issued for a non-retail distributor license applicant.

NEW SECTION

WAC 314-07-065 Reasons the board may deny a liquor license application. Following is a list of reasons the board may deny a liquor license application. Per RCW 66.24.010, the board has broad discretionary authority to approve or deny a liquor license or permit application.

(1) Failure to meet qualifications or requirements for the specific liquor license or privilege, as outlined in this Title 314 WAC and Title 66 RCW.

(2) Failure to submit information or documentation requested by the board.

(3) Misrepresentation of fact by any applicant or financier.

(4) Failure to meet the criminal history standards outlined in WAC 314-07-040.

(5) Failure to meet the liquor law or rule violation history standards outlined in WAC 314-07-045.

(6) Source of funds used for the acquisition, startup and operation of the business is questionable or unverified.

(7) Objection from the local authority or from the public (see WAC 314-09-010 and RCW 66.24.010(8)). The objection must state specific reasons and facts that show issuance of the liquor license at the proposed location or to the applicant business will detrimentally impact the safety, health, or welfare of the community.

(8) Objection from the following entities if they are within 500 feet of the proposed business: a public school, a private school that meets the requirements of chapter 28A.195 RCW, a church, or a public college or university. See WAC 314-09-010 and RCW 66.24.010(9) for more information. Note: Per RCW 66.24.010(9), the board may not issue a new liquor license if the board receives objection from a public school within 500 feet of the proposed licensed business.

(9) The board determines that the issuance of the liquor license will not be in the best interest of the welfare, health, or safety of the people of the state.

NEW SECTION

WAC 314-07-070 Process if the board denies a liquor license application. If the board denies a liquor license application, the applicants may:

(1) request an administrative hearing per chapter 34.05 RCW, the administrative procedure act.

(2) reapply for the license no sooner than one year from the original denial date.

NEW SECTION

WAC 314-07-080 Ownership changes. (a) Licensees must receive prior board approval before making any of the following ownership changes (see WAC 314-07-035 for the definition of “true party of interest”):

Type of change	Type of application	Fee
Change in any of the true party(ies) of interest in a: sole proprietorship, general partnership, limited partnership, or limited liability partnership.	New application	Annual fee for current license privilege.
Change in any of the true party(ies) of interest for a publicly or privately held corporation. The board will waive the fee for a corporate change when the proposed change consists solely of dropping an approved officer.	Application for change in corporate officer and/or stockholder	\$75
Change in any of the true party(ies) of interest in a limited liability company.	Application for change of limited liability company member and/or manager	\$75

(b) The board may inquire into all matters in connection with any such sale of stock or proposed change in officers.

(c) The "proposed sale of more than ten percent of the stock" will be calculated as a cumulative total and must be reported to the board when the accumulation of stock transfers or newly issued stock totals more than ten percent of the outstanding and/or issued stock of the licensed corporation.

NEW SECTION

WAC 314-07-085 Change of locations (1) Changing your liquor license to a new location requires an application, per the process outlined in WAC 314-07-015(2).

(2) Type of change of location application:

Submit a change of location application and pay a \$75 fee if:	Submit a liquor license application and pay the appropriate fee for the type of liquor license you are applying for if:
<ul style="list-style-type: none">▪ You are not changing the type of liquor license that you have at the current location;▪ There is no change in any of the true parties of interest; <u>and</u>▪ Your liquor license is current.	<ul style="list-style-type: none">▪ You are changing the type of liquor license from what you have at the current location;▪ There is a change in any of the true parties of interest; <u>or</u>▪ Your liquor license is not current.

NEW SECTION

WAC 314-07-090 Change of business name. (1) If you wish to change the name of your business, you must apply for a change of trade name with the department of licensing, master license service.

(2) If you wish to change your corporation or limited liability company name, you must apply for a change of name through the secretary of state.

(3) See WAC 434-12 for guidelines for trade names.

NEW SECTION

WAC 314-07-095 Discontinue liquor sales. You must notify the board's enforcement and education division if you plan to stop doing business for more than 30 days, or if you plan to permanently discontinue liquor sales.

NEW SECTION

WAC 314-07-100 Death or incapacity of licensee. (1) The appointed guardian, executor, administrator, receiver, trustee, or assignee must notify the board's licensing and regulation division in the event of the death, incapacity, receivership, bankruptcy, or assignment for benefit of creditors of any licensee.

(2) The board may give the appointed guardian, executor, administrator, receiver, trustee, or assignee written approval to continue liquor sales on the licensed business for the duration of the existing license and to renew the license when it expires.

(3) When the matter is resolved by the court, the true party(ies) of interest must apply for a liquor license for the business.

NEW SECTION

WAC 314-07-110 Are liquor license fees refundable? When a license is suspended or cancelled, or the licensed business is discontinued, the unused portion of the liquor license fee will not be refunded. There are two exceptions:

(1) Per RCW 66.24.420(1)(b), a spirits, beer, and wine restaurant that is located in an unincorporated city or town may receive a refund of the unused portion of their license fees, calculated per calendar quarter.

(2) Per RCW 66.24.015, if a liquor license application is denied or is administratively closed by the board, the application fee will be refunded less a seventy-five dollar non-refundable processing fee.

NEW SECTION

WAC 314-07-120 Board delegation of authority to approve liquor licenses. Per RCW 66.24.010(2), the board may delegate to designated staff members, in writing, the authority to approve unopposed or uncontested license applications.

AMENDATORY SECTION (Amending WSR 01-03-087, filed 1/17/01)

WAC 314-12-020 Applicants--Qualifications--Fingerprinting--Criminal history record information checks--Continuing conditions--Agreements--Reconsideration of denied applications. (1) Where a married person is an applicant for, or holder of a license, the spouse of such applicant, if the parties are maintaining a marital community, shall be required to have the same qualifications as the applicant.

(2) The board may require, as a condition precedent to the original issuance of any annual license, fingerprinting and criminal history record information checks on any person not previously licensed by the board. In addition to the applicant, fingerprinting and criminal history record information checks may be required of the applicant's spouse. In the case of a corporation, fingerprinting and criminal history record information checks may be required of its present and any subsequent officers, manager, and stockholders who hold more than ten percent of the total issued and outstanding stock of the applicant corporation if such persons have not previously had their fingerprints recorded with the board. In the case of a partnership, fingerprinting and criminal history record information checks may be required of all general partners and their spouses. Such fingerprints as are required by the board shall be submitted on forms provided by the board to the Washington state identification section of the Washington state patrol and to the identification division of the Federal Bureau of Investigation in order that these agencies may search their records for prior arrests and convictions of the individuals fingerprinted. The applicant shall give full cooperation to the board and shall assist the board in all aspects of the fingerprinting and criminal history record information check. The applicant may be required to pay a minimal fee to the agency which performs the fingerprinting and criminal history process.

(3) The restrictions on license issuance specified in RCW 66.24.010(2) shall be construed to be continuing conditions for retaining an existing license and any licensed person who ceases to be eligible for issuance of a license under RCW 66.44.010(2) shall also cease to be eligible to hold any license already issued.

~~(4) An applicant for any license or permit issued by the liquor control board, who employs an attorney or agent in connection with an application for such license or permit, shall, upon request, submit in writing the entire agreement between such applicant for license or permit, and the attorney or agent. No part of any compensation agreed upon, paid or received shall in any manner be contingent upon the outcome of the matter before said board. In the event the compensation agreed upon, paid or received, is determined to be excessive, the board reserves the right to refuse to consider the application for such license or permit.~~

(5) (4) The board, in considering an application for a license, may require, in addition to all other information requested concerning the proposed licensed premises (see WAC 314-12-035), that the applicant justify the issuance of the license sought based on an analysis of population trends compared to licenses in the area, any uniqueness of the proposed operation, any unusual circumstances present, plus any other information the applicant(s) may feel will justify the issuance of the license sought.

~~(6)~~ (5) The board may, at its discretion and for good cause shown, reconsider an application denied for reasons other than objection upon receipt of new information within sixty days of the original denial date. Such reconsiderations are not considered part of the normal license application procedure and must be justified on an individual basis. Should the board determine to reconsider a denied application, notice of such reconsideration shall be given to those persons and/or entities entitled to receive notice of an original license application pursuant to RCW 66.24.010(8). Such notice shall be given at least twenty days prior to final determination on the reconsideration. Additionally, at the same time the notice is given, a press release will be issued informing the public of the impending reconsideration. The process for applications denied due to objection is outlined in chapter 314-09 WAC.

REPEALER

The following sections of the Washington Administrative Code would be deleted and not replaced:

WAC 314-12-005

Under what conditions may the board

WAC 314-12-025	delegate authority to approve liquor licenses as provided in RCW 66.24.010(2)?
WAC 314-12-606	Applicants for temporary licenses—Fee—Who qualifies.
WAC 314-12-080	Death or incapacity of licensee.
WAC 314-12-100	Limitation on reapplications.
WAC 314-12-110	Change of name.
	Change of location.